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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,619	02/12/2004	Suresh Rangaswamy Babu	11884/407501	3957

25693 7590 04/20/2007

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EXAMINER	
RUHL, DENNIS WILLIAM	

ART UNIT	PAPER NUMBER
3629	

MAIL DATE	DELIVERY MODE
04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/776,619	Applicant(s) BABU, SURESH RANGASWAMY	
	Examiner Dennis Ruhl	Art Unit 3629	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): none.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *7-9 and 17-33*.
   Claim(s) withdrawn from consideration: *26-33*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

DENNIS RUHL
PRIMARY EXAMINER

Continuation of 3. NOTE:

Continuation of 11. does NOT place the application in condition for allowance because: it is not persuasive. Applicant has argued that because Yaroshuk does not teach or suggest the use of product diffusion modeling, for the examiner to say it is obvious in the 103 rejection is improper and is impermissible hindsight. The examiner notes that the prior art itself does not have to provide a teaching or suggestion to do what is claimed, because if it did then the prior art would be a 102 rejection instead of a 103 obviousness rejection. The prior art does not have to teach or suggest the missing feature, this argument is not-persuasive. As far as the motivation and reasoning for the obviousness, the rejection sets forth that one of ordinary skill in the art would find the act of performing diffusion modeling as obvious, based on what one of ordinary skill in the art has in their knowledge base. Figuring out how much of your defective product has left the production facility, and figuring out where it is, is something that one of ordinary skill in the art would find obvious when you dealing with defective products. This is essentially what is done in every product recall ever performed. That is what you do in a product recall, figure out where your defective products are and how much is out in distribution. When you have defective products with a defect that is of a nature that requires the product to be recalled, one of ordinary skill in the art would clearly find it obvious to try to determine where the product has been distributed and how much is out there. This is something that just flows from the act of recalling a product. Additionally, the examiner notes that in the Firestone tire recall situation, which resulted in the TREAD act being passed by the United States Congress and signed into law by the President, it was determined how many tires were on the market and where they were, so they could be recalled. This is a prior art example of diffusion modeling. The sole argument made by applicant is taken as not much more than a general allegation of an improper rejection and the examiner notes that applicant has not even provided any kind of argument addressing why one of ordinary skill in the art would not have found the modification as obvious. The only argument is that the examiner's rejection is improper. No persuasive rationale or reasoning has been provided that actually addresses the issue at hand that the examiner considers to be obvious, which is the performing of product diffusion modeling .